

**Hopi Villages Drinking Water
Proposed Unilateral Administrative Orders**

Background: Four Hopi Village community water systems (Sipaulovi, Mishongnovi, Polacca, and Shungopavi) have been out of compliance with the arsenic MCL for at least 10 years. Arsenic is naturally-occurring in this region of the country and the levels of arsenic found at the Villages range from 12 ug/L to 24 ug/L. The federal MCL is 10 ug/L. There are twelve self-governing Hopi Villages located within the Hopi Reservation.

Path Towards Compliance

HAMP: The long-term solution to address arsenic exceedances is a new regional water system, the Hopi Arsenic Mitigation Project (HAMP). The planning and construction of the HAMP is expected to cost over \$23M. Since 2004, EPA has contributed \$9M and Indian Health Services ("IHS") has contributed \$12M toward the HAMP. EPA and IHS plan to utilize FY19 appropriations funds to address the remaining funding shortage. All EPA contributions come from the drinking water tribal set aside funds (DWTSA). All IHS contributions come from their Sanitation Deficiency System (SDS) regular funding. Additionally, the Hopi Tribe is contributing approximately \$1.1 million toward the HAMP.

Compliance Orders: EPA has pursued administrative orders on consent (AOCs) with the Tribe and each non-compliant Village as the Respondents. The Hopi Tribe claims that it neither owns nor operates any of the systems, and therefore has declined to be a signatory to the AOCs. EPA does not currently have sufficient information to otherwise establish the Tribe's liability.

The Villages cited numerous reasons why they were reluctant to sign AOCs, including inability to pay for interim measures (alternative water), lack of control over the HAMP, lack of authority to negotiate with the federal government, or lack of a person authorized to sign the AOC.

The case team recommends issuing unilateral orders to each of the non-compliant Villages. Sipaulovi will be issued an order for both the upper and lower Sipaulovi/ Mishongnovi systems since it operates both. The orders would guide the Respondents towards cooperating with IHS on HAMP completion.

EPA has had discussions with the Villages, the Tribe and IHS regarding alternative drinking water and EPA will continue to explore whether IHS or the Tribe can fund alternative water to the Villages. Any alternative water system will be very expensive and will have to be designed to provide compliant water to Villages that are remote from one another.

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Communications and Coordination

August 2015: The Tribe sent a letter stating that the Polacca, Sipaulovi, and Mishongnovi systems were not “tribal facilities” within the definition of EPA’s guidance, following its receipt of EPA’s Tribal interest letter.

February 2017: Finding of Violation letters were sent to each of the four Villages, copying the Tribe. EPA asked the Tribe if it considered Shungopavi to be a tribal facility. The Tribe did not respond.

April 2017: Representatives from EPA visited Phoenix and met with representatives of the Tribe, Villages, and the Tribal utility to discuss a path forward.

August-November 2017: Memoranda of agreement were signed by the Villages, the Hopi Tribe, and the Tribal utility where the Villages agreed to purchase water from the new regional water system.

October 2017: Representatives from EPA visited Hopi for two separate meetings. One was a meeting with the Tribe's water and energy team and the other was a meeting with First Mesa (Polacca).

December 2017: EPA held a preliminary settlement meeting with the Hopi Tribe. The Tribe's attorney and newly elected Chairman were on the call.

March-May 2018: EPA held term sheet calls to kick off negotiations with each of the individual Villages. In most cases, the Tribe participated in these calls.

April-June 2018: EPA provided drafts of the AOCs to each Village and then held calls to discuss the AOCs.

July 2018: EPA sent out a Tribal interest letter for the Shungopavi system. The Tribe did not respond.

August 2018: EPA made the decision to propose unilateral orders as its enforcement response.